IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 668 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJU ALIAS GYANBHADUR JAGAT SINGH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NK MAJMUDAR with MS MOKSHA THAKKAR for the Appellant.
MR KP RAVAL, APP, for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 05/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant herein came to be tried and convicted for offences punishable under Sections 302 and 381 of Indian Penal Code by Sessions Court, Surendranagar, in Sessions Case No.70 of 1995. By judgment and order dated 30th November, 1996, he was ordered to undergo imprisonment for life and to pay a fine of Rs.500/-, in default thereof, to undergo simple imprisonment for one month for the offence punishable under Section 302 of I. P. C. He was also sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.500/-, in default thereof, to undergo simple imprisonment for one month for the offence punishable under Section 381 of I. P. C. and, hence, this appeal.

2. As per the prosecution case, the appellant was working as a Watchman in Pankaj Ceramics, at Thangadh, around June 1995. It is alleged that on 17th June, 1995, he committed murder of one Sanjay Damji and another Prabhubhai Gandubhai Prajapati at about 0.30 hours in the premises of the factory by causing injuries to both of them with the help of an iron pipe. It is alleged that he committed these murders to facilitate theft of cash of Rs.11,500/- from the office premises of the factory. As per the prosecution case,

after committing the murder, the appellant fled away from the factory premises without intimating anyone, but was apprehended next evening at about 8.00 P.M. from Modasa.

3. During the night falling between 16th and 17th June, 1995, the appellant was working as a Watchman. There were other workmen working in the factory. During the night, P.W.2-Bhanuprasad Gopaldas along with driver, Jagdish, went to the factory with a tanker containing furnace oil. Furnace oil was emptied in the containers of the factory. At that time, both the deceased as well as the appellant were present in the factory premises besides other persons. After the tanker was emptied, driver and the cleaner stayed back in the factory premises and took sleep in the tanker itself. As per the prosecution case, P.W.3-Chandan Haripat Senapati (Exibit 10) noticed the dead bodies around 5.30 in the morning when he got up. He, therefore, talked to one Parvez, who, in turn, telephoned their boss. Pursuant to the telephone, the owner of the factory, P.W.1-Vikrambhai Jayendra (Exhibit 7) and his partner, Mayurbhai, arrived at the factory and, after inspection, decided to lodge a First Information Report and Vikrambhai lodged the F. I. R. On the basis of the F. I. R., offence

was registered and investigation started. Police came to be place of incident, prepared Panchnama of the place of incident as also Inquest Panchnama, sent the dead bodies for postmortem and recorded statements of several witnesses. From the material collected by the Investigating Agency, the Investigating Officer went to Modasa in search of the accused, who was missing. He was told by the uncle of the appellant that the appellant had not approached him on that day. But the police kept a watch and, on the Investigating Officer learning about arrival of the appellant and apprehension, went there and officially arrested him. A Panchnama of arrest was drawn. The belongings of the accused were also seized, which included some clothings. The appellant was found to be possessing Rs.8000/ in cash besides certain newly purchased cloths and certain old clothes. Ultimately, upon the police having found sufficient evidence against the appellant, filed charge sheet against him. As the allegations made against the appellant were triable by a Court of Sessions, the case was committed to the Court of Sessions and Sessions Case No.70 of 1995 came to be registered.

3.1 The Trial Court framed charge at Exhibit 4, to which the accused-appellant pleaded not guilty and claimed to be tried. The

Trial Court, after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in establishing charges levelled against the appellant and recorded conviction.

4. Learned Advocate, Mr. N. K. Majumdar appearing with Ms. Moksha Thakkar, has raised the following contentions :-

(1) That the entire case is founded on circumstantial evidence and the prosecution has failed to establish a complete chain of circumstances linking the appellant-accused with the offence.

(2) That, in the prosecution story, there is no motive attributed to the accused-appellant for commission of murder of the two deceased.

(3) That the F.I.R. is filed at a belated stage.

(4) That the conduct of the owner of the factory, P.W.1-First Informant, Vikaram, is not only not natural, but also

suspicious.

(5) That the evidence about presence of the appellant at the time of he incident is shaky. The evidence regarding time of arrival of tanker and presence of other workers is also shaky.

(6) That according to P.W.1-Vikrambhai Aslambhai telephoned him and informed him about the incident. According to Chandan, he noticed the dead bodies first and he informed Parvez and Parvez, in turn, informed the owner (Vikrambhai). Parvez and Aslam are two names of the same person and he has not been examined as a witness.

(7) No test identification parade is conducted to show that the applicant had made purchase from a shop at Modasa.

(8) That there is no evidence to show that the cash found from the appellant was the very cash which was stolen from the factory.

(9) That the say of the prosecution that a large amount like

Rs.11,500/- was kept in the factory in an unlocked drawer is also not believable.

(10) That there is no evidence to point at the source of information about the telephone number at Modasa.

(11) That the postmortem note indicates presence of other injuries on the dead bodies not attributable to an iron pipe. This would indicate either a scuffle or dragging of the dead bodies and there is no evidence led by the prosecution on either.

4.1 Learned Advocate for the appellant relied on decision in the case of ***Ramreddy Rajeshkhanna Reddy & Another v. State of Andhra Pradesh, 2006(2) GLH 271 and Narendra Singh and Another v. State of M. P., (2004) 10 SCC 699***.

4.2 It was submitted that, as per the law settled by the Apex Court, presumption cannot take place of proof. The Trial Court has committed an error in appreciating the evidence and in ignoring the missing links in the prosecution story. The Trial Court ought to

have recorded acquittal of the appellant and, therefore, this appeal may be allowed and conviction be set aside.

5. Learned Additional Public Prosecutor has opposed this appeal. According to him, the Trial Court has considered all relevant aspects and the judgment is supported by a sound reasoning. Learned Additional Public Prosecutor submitted that the conduct of the appellant is remarkable. The appellant absconded after the incident had occurred and was apprehended within hours with blood stained clothes and part of the booty. There is evidence of last seen together in the form of deposition of Chandan and Bhanuprasad. The appellant had no reason to abscond and, therefore, considering the circumstances as a whole, the case against the appellant is rightly held to have been properly established and conviction is well recorded. The appeal, therefore, may be dismissed.

6. We have examined the record and proceedings of the case in light of the submissions made by rival sides.

7. The first informant, owner of Pankaj Ceramics-

Vikarambhai Jayendrabhai is examined at Exhibit 7. According to him, the incident occurred on 17th June, 1995. He was at his home at that time. In the morning, he received a telephone call from Aslambhai at about 7 o' clock informing him that Sanjaybhai and Prabhubhai were lying in a severely bleeding condition. The witness, therefore, rushed to the factory on his scooter. He says that when he entered the pottery, he saw Sanjaybhai lying on a four-wheeled handcart, semi covered with a bed sheet. He was bleeding severely from his head. His mouth was open and was dead. On going further, he found Prabhubhai lying in shed No.2 with his face up near furnace. He was also bleeding from his head and was dead. On inquiry, he found that the previous night a tanker had come with furnace oil, which was lying in the compound and the driver and the cleaner were sleeping in the tanker. They were Jagdishbhai and Bhanuprasad respectively. They informed him that they had come to the factory at about 1.30 A.M. On inquiry, they told him that both the deceased and Watchman-Goorkha were present when they arrived. The said Watchman-Goorkha is identified by this witness as the accused before the Court. According to him, the accused-appellant was working with him for about four months. The driver and the cleaner of the

tanker told the witness that the appellant had inquired of them as to at what time bus from Thangadh to Ahmedabad would be available. They told him that after the tanker was emptied, at about 3.00 A.M., both the workers (the victims) went inside the factory and the Watchman (the accused) went out for a round and the driver and the cleaner went to sleep. The appellant was staying in a room in the compound of the pottery. The witness says that, thereafter, he went to the room of the accused, but found that neither the accused nor his luggage was there. He, therefore, immediately went to his partner, Mayurbhai, who advised him to go to Police Station and, therefore, he went to Police Station. The witness says that he was not aware about the native of the accused and was not aware of any motive. He says that he lodged F.I.R. at the Police Station, which is Exhibit 8. He says that, after lodging the F.I.R., when he went to the pottery, his partner, Mayurbhai, was present. They found that the drawer of the table was opened and an amount of Rs.11,500/- was missing, comprising of currency notes of the denominations 500 and 100. He says that the accused used to telephone some relative of his staying at Modasa.

7.1 It emerges from cross-examination that the witness had

joined the said business about six months back as a partner. He admits that the compound wall was constructed only on two sides of the factory and, as a result, because of the open space, the factory was accessible to all and any during night. He admits that he maintains a register of workmen, but he has produced no such register before police. On the day of incident, Aslambhai Parvez, Aminulla Ismail, Chandar Senapati and Vimal Pandit were working in the factory and were staying in the adjoining room He admits that they used to keep the office of the factory open. He says that the amount of Rs.11,500/- would be reflected in the books of accounts. He says that the iron pipe was recovered by police in his presence. He admits that the room where the accused was staying was at a distance of about 80 feet from the office of the factory. Aslambhai used to stay in another room located at a distance of about 60 feet from the office. The distance from the place where dead body of Sanjay was lying to the room of Aslam or the accused was about 100 feet and the distance between the dead body of Sanjay and the tanker was about 200 feet. According to him, because of the firing noice of furnace, any sound in the vicinity of the place where the dead body of Sanjay was found may not be heard. He says that Sanjay was working at the furnace during

night.

7.2 Bhanuprasad Gopaldas, the cleaner of the tanker is examined at Exhibit 9. According to him, he and driver-Jagdish came to Pankaj Ceramics at about 10.30 P.M. with the tanker containing furnace oil. At that time, P.W.1-Vikrambhai and his partner-Mayurbhai were present. The accused was also present there. There were in all three other workmen and the tanker was emptied in a tank. He says that, after the tanker was emptied, the two victims and the accused were present and they were together for about half an hour and, thereafter, the witness says that, he and the driver went into the tanker for a sleep. They were gossiping *inter se*. He was awakened by Vikrambhai at about 8.00 A. M. and told him that two dead bodies are lying. He saw those dead bodies and identified them as of the two workmen.

7.3 Witness-Chandan Haripat Senapati is examined at Exhibit 10. He says that, he had gone to Pankaj Ceramics on the day of incident along with Aslam Parvez, Vimal Pandit and Yunusbhai. He says that they were staying in the said premises at the factory since five to six months prior to the incident. He says

that, on the day of the incident, apart from them, Sanjay, accused-Raju Goorkha and another boy were present. The accused was working there as a Watchman. Sanjay was fireman and deceased-Prabhubhai was the helper. He says that he got up in the morning around 6 o' clock and was brushing his teeth. As he was to leave for Calcutta, he went into the factory for switching the water pump on. While he was returning, he went to call Sanjay and found that Sanjay was lying on a handcart severely bleeding. He also noticed the other man, Prabhubhai, lying in the similar condition. He, therefore, talked to Pravez and Parvez, in turn, informed the owner of the factory on telephone. He says that he stayed back and got his tickets for Calcutta cancelled. He says that he saw the tanker for the first time in the morning. He also says that the accused was not available since morning.

7.3.1 The witness has been cross-examined and he admits that there were about 50 persons working in the factory. They four were working in the factory for about six months then and were staying in the room allotted to them in the factory premises. He says that during those six months, he never heard any quarrel between the accused and the deceased. He denies the suggestion

that they were sleeping outside the room by saying that they were sleeping inside the room with the door and windows shut. The witness says that all of them got up between 5.00 and 6.00 A.M. and he saw the dead bodies at about 5.30 A.M. He went to switch on the water pump. He, therefore, immediately talked to Parvez. He says that Parvez telephoned to the owner almost immediately.

7.4 Witness-Vinodchandra Indulal is examined at Exhibit 11. He is a readymade garment businessman from Modasa. He says that either on 22nd June, 1995 or on 24th June, 1995, the police came to his shop with a man, whom he identifies before the Court. He says that the accused had purchased trousers, jersey and baby suit worth Rs. 510/- and he issued bill therefor. During cross-examination, he states that the accused had never come to him for any purchase prior to that occasion. He admits that there was no test identification parade arranged. He also does not remember as to whether the accused was handcuffed by the police. He confirms that the bill was issued by him.

7.5 The postmortem notes are at Exhibits 13 and 14. The Inquest Panchnama is at Exhibit 15 and the F.S.L. report is at

Exhibit 20, of which report of the Serologist also forms part.

7.5.1 Dr. Rameshkumar Harjibhai Bhalala is examined at Exhibit 24. He states that he was on duty at Chotila Community Health Centre as Medical Officer when the dead body of Sanjay Damji was brought before him for postmortem, at about 2.00 P.M. He performed the postmortem between 2.30 P.M. and 4.00 P.M. He found injuries in the form of C.L.W. over face, left ear and left eyebrow. There was a fracture of the frontal bone. According to him, the cause of death of the deceased was shock due to head injury and also due to hypovolumic shock. The witness says that dead body of Prabhubhai was also brought to him. He started postmortem around 4.00 P. M. which was over by 5.45 P.M. He noticed C.L.W. on face and right occipital region. He found number of abrasions on back. A number of contusions were noticed in the skull. The cause of death was hypovolumic shock and the injuries sustained by the deceased. He says that he had prepared the postmortem notes, which are at Exhibits 13 and 14.

7.6 Witness No.6-Ramesh Dayarambhai is examined at Exhibit 25. He is the Panch witness summoned at the place of

incident. He says that the Panchnama was prepared in his presence. The sample of blood stained soil was taken so also the sample of soil. Police found the iron pipe with blood stains over it and, therefore, they seized the same. He has been cross-examined and he states that the handcart, on which dead body was lying, was at a distance of about 60 feet away from the office. The other dead body was lying about 70 feet away from the office and the distance between the two dead bodies was about 10 to 12 feet. The pipe was lying at a short distance from the handcart. The Panchnama of place of offence is at Exhibit 26.

7.7 Bhadursinh Gajubha (Exhibit 27) was working at Thangadh Police Station as P.S.O. on 17th June, 1995. He says that he recorded the F.I.R. as given by Vikrambhai.

7.8 Witness Ayubkhan Rahimkhan is examined at Exhibit 30. He was summoned as a Panch witness at Modasa, near Jawahar Lodge. The accused and Police Constables of Than were present. The accused had two bags, a shawl and some money. There was also a blood stained shirt. He says that the Panchnama was prepared in his presence and is signature was obtained, which

is at Exhibit 31. During cross-examination, it emerges that the police had told him that the goods were recovered from accused-Rajubhai.

7.9 Investigating Officer, Mahendrasinh Jivansinh Dabhi, is examined at Exhibit 32. He says that he received a Yadi from P.S.O. on 17.6.1995. He was in Bandobast at that time. On receiving this information through wireless set, he rushed to the Police Station and then to the place of incident. The Inquest Panchnama was prepared, the dead bodies were sent for postmortem, Panchnama of place of incident was recorded and then statements of witnesses were recorded. The information of the owner of the factory was recorded stating that theft of Rs.11,500/- was committed. He says that he obtained the telephone number of Modasa, where accused-Raju was telephoning frequently and then left for Modasa. The telephone number was of Sabarkantha District Co-operative Bank, where uncle of the accused was working as a peon. On interrogation, he informed that accused-Raju had not arrived there and, therefore, they arranged for a watch. At about 20.30 hours, he received the information that Raju had arrived and he was apprehended. Therefore, he went to

the spot and formally arrested him along with muddamal. He admits during cross-examination that he has not recorded any statement of any person from Telephone Department. He says that he had recorded statement of uncle of the accused.

8. If the evidence of the prosecution is examined in light of the submissions made before us, we find that the evidence of the prosecution cannot be said to form a complete chain of circumstances pointing at the guilt of the accused-appellant ruling out the basic and cardinal principle of Criminal Jurisprudence of presumption of innocence of the accused. We find a number of missing links and/or lack of cogent material to link the circumstances connecting the accused with the crime.

8.1 We also find that the investigation is carried out in a cursory manner and the evidence led by the prosecution is also insufficient and vague on material aspects.

9. Examining the prosecution case in chronology of events, as is alleged to have occurred, firstly, we find that the evidence about the time of arrival of the tanker and about the number of

persons present at that time and thereafter during the night of incident is inconsistent. According to the first informant-Vikram (Exhibit 7), he was not present during the night when the tanker arrived or even thereafter and he learnt about the incident only the next morning when he received a telephone call from Aslam. He has deposed about what transpired at the factory on the basis of what was allegedly told to him by the driver and the cleaner of the tanker, namely, Jagdish and Bhanuprasad, respectively. Differently put, Vikram had no personal knowledge about what had transpired at the factory and in what sequence on the night of the incident. But still he deposes that the tanker arrived around 1.30 A.M. and, at that time, the appellant was the Watchman on duty, both the deceased were found in company of the appellant by the driver and the cleaner of the tanker.

9.1 However, version of Vikram is not supported by Bhanuprasad in any manner. According to Bhanuprasad, he was the cleaner of the tanker. They reached the place around 10.30 in the night, emptied the tanker and then went to sleep. Bhanuprasad does depose about presence of both the deceased. But, in addition, he deposes about presence of Vikram and Mayur (partner of

Vikram). He then says that they were all present at the factory till the tanker was emptied and he and the driver went to sleep in the tanker and that they were talking *inter se*. He then says that he was awakned by Vikrambhai next morning at 8.00 A.M. and was informed about two dead bodies.

9.1.1 Jagdish, driver of the Tanker is not examined as a witness.

9.2 P.W.3-Chandan Haripat Senapati (Exhibit 10) speaks of presence of himself, Aslam, Parvez, Vimal Pandit, Yunus, etc. at the factory in the night of the incident. According to him, the accused-appellant was working as a Watchman at the factory. He says that he was staying in a room in the factory premises and in the early morning, following the night in which the incident had occurred, around 5.30-6.00 o' clock, he was brushing his teeth as he had to go to Calcutta. While returning after switching the water pump on, he went to call Sanjay and found that he was lying in a handcart and was bleeding. Another man was also lying in the factory in a bleeding condition. He, therefore, talked to Parvez who, in turn telephoned the employer, who came to the factory thereafter. He

pleads ignorance about the arrival of tanker, etc. It emerges from his evidence that the accused-appellant had no dispute or quarrel with anyone during the previous six months of the incident. He says that Parvez telephoned the Boss (employer), Vikram, at about around 5.30-6.00 in the morning and the employer arrived within then minutes thereof at the factory.

9.3 It is, thus, clear that it is a matter of doubt whether Vikaram was not present in the factory when the incident occurred. It is a matter of doubt whether the tanker arrived at the factory around 10.30 in the night and was emptied or whether it arrived at 1.30 A.M. and was emptied around 3.00 A.M. . This would be relevant in view of the fact that, according to the accused, he was despatched by P.W.1-Vikram by train departing around 1 o' clock in the night, before which the tanker had arrived and was emptied. Vikram keeps total silence on his being present at the factory and being instrumental in despatch of the appellant. On the contrary, according to him, he learnt about it only in the morning when he received telephone from Aslam. There is also discrepancy about the time as to when Aslam telephoned Vikram. The unanswerable and unanswered question in which version is correct and reliable.

9.4 Apart from the above aspect, the depositions of these witnesses, according to the prosecution, indicate that the deceased were last seen in company of the appellant. However, it is difficult to accept this proposition.

9.4.1 Vikram does not plead to be present at the factory in the night of the incident. Whatever he has deposed is on the basis of a derived knowledge through driver and cleaner of the tanker. Accepting that as it is, what emerges is that the driver and the cleaner saw the two deceased going into the factory and the accused going for a round outside. It, therefore, cannot be said that they were seen last in company of each other.

9.4.2 Against this, Bhanuprasad, the cleaner of the tanker says that Vikram and Mayur were present so also 2-3 other workmen and when he and the driver went to sleep in the tanker, they were all talking inter se. Differently put, it cannot be said that it was the appellant alone who was seen in company of the deceased. Apart from the appellant, Vikram, Mayur and 2-3 other workmen were also seen last by Bhanuprasad.

9.4.3 There is no other evidence led by the prosecution to prove that the appellant was last seen in company of the deceased in proximity of incident, timewise or placewise.

9.5 This would render these pieces of evidence susceptible to doubt whether Vikram is telling the truth or Bhanuprasad is telling the truth and whether the incident could have occurred in the manner it is alleged to have occurred. There is no evidence to show that the appellant had any dispute or grievance with the deceased persons and, as such, there is no motive attributed to the appellant for murder. The motive attributed is theft of Rs.11,500/- from the drawer of a table of the office of the factory. To prove this, the prosecution has relied on evidence of Vikram, who says that money was kept in the office for routine work, ignoring that ordinarily huge amount like Rs. 11,500/- would not be kept in an office in an unlocked drawer of a table lying in an unlocked room. We find that there is total absence of evidence to show that the amount recovered from the appellant consisted of the same currency notes which were found to be missing from the drawer, as alleged.

9.5.1 Assuming for a moment that the motive behind the murder was theft, as is alleged, we do not find any evidence to support this motive. If the money was kept in an unlocked drawer of a table kept in an unlocked office room, resistance by the deceased persons cannot be presumed or inferred. It is nobody's case either, least any evidence, that there was any resistance offered by any of them, which would prompt the appellant to commit murder of the deceased persons. On the contrary, if the evidence is seen, it is found that both the deceased persons were lying at a distance from the office.

9.5.2 Factum of theft of Rs.11,500/-, having not been proved satisfactorily by the prosecution, cannot prove and provide motive for murder in light of foregoing discussion.

9.6 The case of the prosecution also suffers from lack of evidence with regard to the source of information which, ultimately, led to arrest of the accused-appellant. It is adduced that police learnt about the fact that the appellant was frequently making calls to Modasa. Therefore, they collected the number and

went to Modasa and found that the number was registered in the name of a bank. But there is no evidence to show as to who and on what basis gave that number to the police. There is no evidence collected from the Telephone Exchange about making of such calls and their frequency. No one is examined who could have said that he was witness to the appellant making frequent telephone calls at particular place.

9.7 The prosecution theory of the appellant having murdered two able bodied persons with the help of a pipe also becomes doubtful for the reason that it is difficult to believe that a man singularly will be able to commit murder of two persons with the help of a pipe without raise of any alarm and without anybody else knowing about it although a number of persons were present in the factory itself. The distance between the dead bodies is also sizeable. The evidence indicates that the incident in respect of each victim must have occurred at that very place, meaning thereby that the assault was at two different places. If one of the persons is attacked with a pipe, obviously, he would have raised some cry for help, which ought to have been noticed by other persons in the factory. A feeble attempt is made to crease out this discrepancy by

eliciting from the witnesses the fact that there would be hissing sound of furnace. But in that regard also, there is no positive evidence.

9.8 The appellant was formally arrested at 8.00 P.M. on the next day by police. The evidence in this regard is also interesting. The Investigating Officer says that, on the basis of information about telephone calls, he went to Modasa and found that the number was that of a bank. He found that uncle of the appellant was serving there as a Watchman (He has not been examined by the prosecution). On being interrogated, uncle of the appellant informed that the appellant had not gone to him. They, therefore, kept a watch. Then on learning that the appellant had been apprehended, he went there and formally arrested him. There is absolutely no evidence to indicate as to who apprehended the appellant, at what time, from where, under what circumstances and on what basis.

9.9 The evidence about the appellant having made purchases from a shop keeper, namely, Vinodchandra Indulal (Exhibit 11) is also interesting . The witness states that the

appellant had made some purchases from him. But during cross-examination, he admits that he cannot remember all his customers even on the next day. No test identification parade was ever arranged by the Investigating officer in respect of this witness.

9.10 It is also alleged that when the accused-appellant was apprehended, his shirt was stained with blood. In our opinion, if the prosecution evidence as a whole is considered, this fact is of no consequence. The F. S. L. report indicates that the blood found on cloth of the appellant was “AB” group, whereas the blood group of the deceased was in one case not identifiable and in another was “B” group. Differently put, the blood stains found on shirt of the appellant was not that of the group of either of the deceased. And there is positive evidence that it was of the group of the appellant himself. Therefore, find of blood stained cloth with the appellant is of no virtue to the prosecution.

9.11 The story of the prosecution that the appellant moved with blood stained cloth also does not seem to us to be so palatable. Ordinarily, a man would get rid of blood stained clothes as early as possible rather than to move with the blood stained clothes from

Thangadh to Ahmedabad and then to Modasa and at Modasa also, move with blood stained clothes in the market and do shopping.

9.12 In addition to the above aspects, the evidence indicates that the factory in question had only two compound walls and there was absence of a wall or fencing on the other two sides. There is a specific evidence that anybody can have access to the premises.

9.13 The medical evidence regarding the cause of death and injury being antemortem and fatal possible with pipe cannot be disputed much. But there is evidence to show that, apart from the injuries found on persons of the deceased, which could be attributed to the pipe, there were other injuries in the form of abrasions, etc., which would indicate that either there was a scuffle or the dead bodies were dragged and there is no evidence in this regard.

10. When the evidence led by the prosecution is not direct, but is circumstantial in nature and when it is found that the evidence linking the circumstances to form a chain is weak or unreliable and there are lacunas in the evidence, in our opinion,

conviction for a serious offence like murder cannot be confirmed. As already discussed, the evidence is too weak and scanty and cannot be said to form a complete chain of events. There is lack of reliable proof of motive and it is too risky to found a conviction on such evidence and/or to confirm the same. The prosecution cannot be said to have proved the case against the appellant beyond reasonable doubt. The appeal, therefore, merits acceptance.

11. In the result, the appeal is allowed. The judgment and order of conviction and sentence rendered by the Trial Court is hereby set aside. The appellant is acquitted of the charges with which he was charged. The appellant is not required to be kept in custody on this count. The order regarding muddmal currency notes and clothes is hereby set aside and the muddamal recovered from the appellant is ordered to be returned to him. There shall be no change so far as disposal of other muddamal is concerned.

12. Before parting, we may record that the appellant was granted furlough while he was undergoing sentence and he is absconding since 2001. Be that as it may, it is for the State to

decide what recourse to take for his abscondance.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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